STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SEBASTIAN AUSTYN-MCKENZIE COUTURIER and ANTOINETTA MARIE HERNANDEZ, Minors.

FRANK J. STANLEY and PATTI L. STANLEY,

Petitioners-Appellants,

v

JUDGE NANARUTH CARPENTER, MICHIGAN CHILDREN'S INSTITUTE, and CATHOLIC SOCIAL SERVICES OF WAYNE COUNTY,

Respondents-Appellees.

UNPUBLISHED
October 21, 2003

No. 245206
Oakland Circuit Court
Family Division
LC No. 02-661974-AM

Before: Owens, P.J., and Griffin and Schuette, JJ.

PER CURIAM.

Petitioners appeal as of right from the trial court's orders dismissing their petitions to adopt the minor children pursuant to § 45 of the Adoption Code, MCL 710.45. We affirm.

I. Facts

Petitioners are licensed foster care providers. This case involves petitioners' unsuccessful efforts to adopt two children who were placed in their home for foster care. The two children, who are not related, were placed in their home as a result of separate child protection proceedings that were initiated in Kent County and Wayne County. Sebastian Couturier (Sebastian) was placed in petitioners' home after he was born premature in October 2000. Antoinetta Hernandez (Antoinetta) was placed in petitioners' home after she was born premature in February 2001. Respondent Catholic Social Services of Wayne County (CSSWC) was the agency responsible for the children while they were in foster care.

In May 2001, the parental rights of Sebastian's birth parents were terminated in the Kent Circuit Court. Sebastian remained a court ward. His foster care placement in petitioners' home was continued. In September 2001, the parental rights of Antoinetta's birth parents were terminated in the Wayne Circuit Court. Antoinetta was committed to respondent Michigan Children's Institute (MCI) for adoption planning, supervision, care and placement. At that same time, CSSWC removed Sebastian and Antoinetta from their foster care placement in petitioners'

home. However, William Johnson, the MCI superintendent (hereafter "Superintendent Johnson"), while mistakenly believing that he had jurisdiction over both children, later determined that Sebastian should be returned to petitioners' home for foster care placement.

Sebastian remained in petitioners' home until Judge Nanaruth Carpenter withheld consent for petitioners to adopt Sebastian in March 2002. Superintendent Johnson had earlier withheld consent for petitioners to adopt Antoinetta in January 2002.

Petitioners subsequently filed petitions in the Oakland Circuit Court (hereafter "trial court") to adopt the two children, accompanied by motions requesting a hearing under MCL 710.45, based on their inability to obtain consent to the adoptions. Following an evidentiary hearing at which the decisionmakers, Superintendent Johnson and Judge Carpenter, each testified, the trial court found that petitioners failed to establish by clear and convincing evidence that the decisionmakers arbitrarily or capriciously withheld consent. Accordingly, the adoption petitions were dismissed. Petitioners now appeal.

II. Analysis

Having considered petitioners' arguments on appeal, we find no basis for disturbing the trial court's decision. We have limited our review to the claims raised in petitioners' statement of the questions involved. MCR 7.212(C)(5); *Meagher v McNeely & Lincoln, Inc,* 212 Mich App 154, 156; 536 NW2d 851 (1995).

We first address petitioners' claim that the trial court committed legal error by not admitting testimony other than that of Superintendent Johnson and Judge Carpenter. In general, a trial court's evidentiary rulings are reviewed on appeal for an abuse of discretion. *People v Lukity,* 460 Mich 484, 488; 596 NW2d 607 (1999); *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998). Preliminary questions of law affecting the admission of evidence are reviewed de novo. *Lukity, supra* at 488.

Upon de novo review, we conclude that petitioners have not shown that the trial court commited an error of law. The trial court did not preclude witnesses other than the decisionmakers, but only ruled that the testimony would be limited to the decision-making process and that the proofs would begin with the decisionmakers' testimony. Pursuant to MCL 710.45, the initial decision that the trial court was required to make was whether petitioners established by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious. *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994). The trial court was not permitted to decide the adoption issue de novo. *Id.* Hence, the trial court did not err by limiting the scope of the hearing to evidence relevant to the decisionmakers' reasons for withholding consent.

Further, given that petitioners have not identified any specific evidence relevant to the decision-making process that they believe should have been admitted, but was excluded by the trial court, we find no basis for relief stemming from the trial court's evidentiary rulings. Petitioners' assertion that they were denied a due process opportunity to be heard affords no basis for relief. Petitioners cite no authority for the proposition that due process requires a trial court to hear irrelevant evidence. See *Master Craft Engineering, Inc v Dep't of Treasury,* 141 Mich App 56, 73; 366 NW2d 235 (1985).

Next, we consider petitioners' claim that the trial court committed legal error with regard to the notion of "correctness" at the hearing on their motions under MCL 710.45. Examining this claim in the context of the specific evidentiary ruling cited by petitioners as factual support for their claim of error, *People v Norman,* 184 Mich App 255, 260; 457 NW2d 136 (1990), we conclude that petitioners have not demonstrated an error of law affecting the trial court's evidentiary ruling to disallow irrelevant questioning offered by petitioners to refute the accuracy of information in reports considered by Judge Carpenter. *Lukity, supra.* The trial court properly recognized that the scope of the hearing did not involve the correctness of information in the reports on which Judge Carpenter relied when deciding whether to withhold consent, but rather whether Judge Carpenter's decision to withhold consent to adopt Sebastian was made in an arbitrary and capricious fashion. *In re Cotton, supra.*

Next, we consider petitioners' claim that the trial court erred in denying their motions and dismissing their adoption petitions under MCL 710.45. With regard to the motions, the trial court's scope of review of the decisionmakers' actions was, as indicated previously, limited to whether there was clear and convincing evidence that the decisions to withhold consent were arbitrary and capricious. MCL 710.45(5); *In re Cotton, supra.* The clear and convincing evidence standard is the most demanding evidentiary standard in a civil case. *In re Martin,* 450 Mich 204, 227; 538 NW2d 399 (1995). Evidence is clear and convincing if it "produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Id* at 227, quoting *In re Jobes,* 108 NJ 394, 407-408; 529 A2d 435 (1987).

On appeal, an appellate court generally reviews a trial court's factual findings for clear error. See MCR 2.613(C); cf. *Buchanan v Flint City Council,* 231 Mich App 536; 547; 586 NW2d 573 (1998). "Generally speaking, factual findings are clearly erroneous if there is no evidence to support them or there is evidence to support them but this Court is left with a definite and firm conviction that a mistake has been made." *Zine v Chrysler Corp,* 236 Mich App 261, 270; 600 NW2d 384 (1999). An appellate court generally reviews questions of law determined by a trial court de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n,* 437 Mich 75, 80; 467 NW2d 21 (1991). The trial court's application of the law to facts is also reviewed de novo. *Centennial Healthcare Mgmt Corp v Dep't of Consumer & Industrial Svcs,* 254 Mich App 275, 285; 657 NW2d 746 (2002).[1]

In the case at bar, we are not persuaded that the trial court clearly erred in finding that petitioners did not meet their burden of proof under MCL 710.45. We reject petitioners' challenge to the credibility of the decisionmakers' testimony. It is apparent from the record that

[1] Although the parties on appeal, with the exception of Judge Carpenter, rely on the standard of appellate review for administrative actions falling within Const 1963, art 6, § 28, discussed in *Boyd v Civil Service Comm'n,* 220 Mich App 226; 559 NW2d 342 (1996), we note that the parties have not established that Const 1963, art 6, § 28, is relevant to a motion under MCL 710.45. In any event, as noted in *Boyd, supra,* the clearly erroneous standard of appellate review has been widely adopted in Michigan jurisdiction. We have applied the clearly erroneous standard, as it applies to the fact findings of the trial court rendered for purposes of deciding petitioners' motion.

the trial court found both decisionmakers to be credible witnesses. A reviewing court gives deference to the trial court's special opportunity to judge the credibility of the witnesses who appear before it. MCR 2.613(C); see also *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Giving the appropriate deference to the trial court's findings, the essential question before us is whether the decisionmakers' testimony about the process that they followed in gathering information and their reasoning, examined in the context of the information that they considered, shows that the decisionmakers arbitrarily and capriciously withheld consent. In each case, we note that the evidence reflected that the decisionmaker did not hold a formal hearing, but gave petitioners an opportunity to provide information for their consideration. Each decisionmaker also had either phone or personal contact with petitioners, although no formal interview was conducted. Both decisionmakers received positive and negative information about petitioners before withholding consent for the adoptions.

Superintendent Johnson's decision to withhold consent for petitioners to adopt Antoinetta was made approximately four months after Antoinetta was removed from her foster care placement in petitioners' home. Superintendent Johnson's concerns about petitioners' failure to cooperate with CSSWC, Antoinetta's medical care, and petitioners' ability to provide for both Antoinetta's and Sebastian's medical and developmental needs provided good reason for withholding consent. *In re Cotton, supra* at 185. We agree with the trial court that Superintendent Johnson's reliance on reports and recommendations of the CSSWC, the agency responsible for protecting Antoinetta's best interests, was not unfounded. The trial court did not clearly err in finding that petitioners did not establish clear and convincing evidence that Superintendent Johnson acted arbitrarily and capriciously in withholding consent. Superintendent Johnson's decision was neither unreasoned nor whimsical. *Bundo v Walled Lake*, 395 Mich 679, 703 n 17; 238 NW2d 154 (1976).

Judge Carpenter's decision to withhold consent for petitioners to adopt Sebastian was made at a time when Sebastian was placed in petitioners' home for foster care. However, the CSSWC was supervising Sebastian's medical care. Like Superintendent Johnson, Judge Carpenter's concerns about petitioners' ability to provide for Sebastian's medical needs provided good reason for withholding consent. Judge Carpenter's additional concerns about petitioners' reasons for wanting to adopt Sebastian and whether their home environment would meet Sebastian's long-term needs also provided good reasons for withholding consent. Moreover, petitioners had notice of the type of psychological evaluation that Judge Carpenter would have found helpful in addressing the concerns of herself and the service providers, but failed to provide it. Judge Carpenter was not required to delay a decision on whether to consent to the adoption until a satisfactory psychological evaluation was produced. We agree with the trial court that Judge Carpenter's reliance on the CSSWC reports and recommendation of the guardian at litem for Sebastian was appropriate. Although Judge Carpenter had both positive and negative information concerning petitioners, the trial court did not clearly err in finding that petitioners did not establish by clear and convincing evidence that Judge Carpenter arbitrarily and capriciously withheld consent. *Bundo, supra* at 703 n 17; *In re Cotton, supra.*

Finally, because the adoption petitions were not relevant unless the trial court found grounds for granting petitioners' motions challenging the decisionmakers' withholding of consent, we reject petitioners' claim that the trial court erred by not going beyond the testimony and evidence for purposes of considering the children's best interests. MCL 710.45(5) and (6).

The trial court was not permitted to decide the adoption issue de novo when ruling on petitioners' motions. *In re Cotton*, *supra* at 184.

Affirmed.

/s/ Donald S. Owens
/s/ Richard Allen Griffin
/s/ Bill Schuette